IN THE

Supreme Court of the United States

OCTOBER TERM, 1970.

DEC 9 1970
E. ROBERT SEAVER, CLERK

No. 49 ... Original.

STATE OF ILLINOIS, ex rel. WILLIAM J. SCOTT, Attorney General of Illinois,

Plaintiff,

vs.

CITY OF MILWAUKEE, WISCONSIN, a municipality incorporated under the laws of the State of Wisconsin, and a political subdivision thereof, and

CITY OF KENOSHA, WISCONSIN, a municipality incorporated under the laws of the State of Wisconsin, and a political subdivision thereof, and

CITY OF RACINE, WISCONSIN, a municipality incorporated under the laws of the State of Wisconsin, and a political subdivision thereof, and

CITY OF SOUTH MILWAUKEE, WISCONSIN, a municipality incorporated under the laws of the State of Wisconsin, and a political subdivision thereof, and

THE SEWERAGE COMMISSION OF THE CITY OF MILWAUKEE, a municipality existing under the laws of the State of Wisconsin, and a political subdivision thereof, and

THE METROPOLITAN SEWERAGE COMMISSION OF THE COUNTY OF MILWAUKEE, a municipality incorporated under the laws of the State of Wisconsin, and a political subdivision thereof,

Defendants.

MOTION FOR LEAVE TO FILE BILL OF COMPLAINT, BILL OF COMPLAINT AND STATEMENT AND BRIEF IN SUPPORT OF MOTION.

WILLIAM J. SCOTT,
Attorney General of the State of Illinois,
State of Illinois Building,
160 North La Salle Street,
Chicago, Illinois 60601,

Attorney for Plaintiff.

FRED F. HERZOG,
Of Counsel

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STATE OF ILLINOIS, ex rel. WILLIAM J. SCOTT, Attorney General of Illinois,

Plaintiff,

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CITY OF MILWAUKEE, WISCONSIN, a municipality incorporated under the laws of the State of Wisconsin, and a political subdivision thereof, and

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THE METROPOLITAN SEWERAGE COMMISSION OF THE COUNTY OF MILWAUKEE, a municipality incorporated under the laws of the State of Wisconsin, and a political subdivision thereof,

Defendants.

MOTION FOR LEAVE TO FILE BILL OF COMPLAINT, BILL OF COMPLAINT AND STATEMENT AND BRIEF IN SUPPORT OF MOTION.

MOTION FOR LEAVE TO FILE BILL OF COMPLAINT.

The State of Illinois, ex rel., by its Attorney General, William J. Scott, hereby seeks leave to file its bill of complaint, respectfully submitted herewith, against the City of Milwaukee, a municipality incorporated under the laws of Wisconsin, the City of Kenosha, a municipality incorporated under the laws of Wisconsin, the City of Racine, a municipality incorporated under the laws of Wisconsin, the City of South Milwaukee, a municipality incorporated under the laws of Wisconsin, the Sewerage Commission of the City of Milwaukee, a municipality existing under the laws of Wisconsin, and the Metropolitan Sewerage Commission of the County of Milwaukee, a municipality incorporated under the laws of Wisconsin.

WILLIAM J. SCOTT,

Attorney General of the State of Illinois,
State of Illinois Building,
160 North La Salle Street,
Chicago, Illinois 60601,

Attorney for Plaintiff.

December, 1970.

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Supreme Court of the United States

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No. ..... Original.

STATE OF ILLINOIS, ex rel. WILLIAM J. SCOTT, Attorney General of Illinois,

Plaintiff,

vs.

CITY OF MILWAUKEE, WISCONSIN, a municipality incorporated under the laws of the State of Wisconsin, and a political subdivision thereof, and

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CITY OF SOUTH MILWAUKEE, WISCONSIN, a municipality incorporated under the laws of the State of Wisconsin, and a political subdivision thereof, and

THE SEWERAGE COMMISSION OF THE CITY OF MILWAUKEE, a municipality existing under the laws of the State of Wisconsin, and a political subdivision thereof, and

THE METROPOLITAN SEWERAGE COMMISSION OF THE COUNTY OF MILWAUKEE, a municipality incorporated under the laws of the State of Wisconsin, and a political subdivision thereof,

Defendants.

BILL OF COMPLAINT.

The State of Illinois, by William J. Scott, its Attorney General, brings this suit against defendants, the City of Milwaukee, City of Kenosha, City of Racine, City of South Milwaukee, Sewerage Commission of the City of Milwaukee, and Metropolitan Sewerage Commission of the County of Milwaukee, and for its cause of action states:

I.

William J. Scott is the duly elected, qualified and acting Attorney General of the State of Illinois and in that capacity is empowered to bring, and does bring, this suit on behalf of the State of Illinois and its citizens.

II.

The original jurisdiction of this Court is invoked under Article III, Section 2, Clause 2 of the Constitution of the United States and Title 28, U.S.C., Section 1251.

III.

The defendants, City of Milwaukee, City of Kenosha, City of Racine, City of South Milwaukee, Sewerage Commission of the City of Milwaukee, and Metropolitan Sewerage Commission of the County of Milwaukee, are municipalities, incorporated under the laws of the State of Wisconsin, political subdivisions thereof and hence citizens of that State. The defendant Sewerage Commission of the City of Milwaukee is charged by law with the duty of collecting, transmitting, and disposing of the city's sewage, while the defendant Metropolitan Sewerage Commission of the County of Milwaukee has the responsibility

for the transmission, treatment and disposal of sewage from territory located within its drainage area.

IV.

At all times pertinent to this complaint, the plaintiff, State of Illinois, has been and now is, the owner in trust, for the benefit of its citizens, of the waters of Lake Michigan within the State's territorial boundaries, and the protector and guardian of these waters for the use, needs, and enjoyment of its citizens and inhabitants, along the Illinois shore from the Wisconsin-Illinois boundary to the Indiana-Illinois boundary.

V.

From ancient geological periods, Lake Michigan has been and is now a natural body of fresh water. It is bordered by the States of Illinois, Wisconsin, Michigan, and Indiana. Frequently, natural currents and atmospheric conditions cause the waters of Lake Michigan to flow north to south along the shoreline of Lake Michigan from a point north of the City of Milwaukee, past the cities of Milwaukee, South Milwaukee, Racine, and Kenosha, Wisconsin, past the Wisconsin-Illinois border along the Illinois shore, and thence southerly and easterly along the Indiana shore. Lake Michigan has been and is now a vital source of water supply for many municipalities, citizens, and inhabitants of Illinois, and has been and is now used as a place of recreation, relaxation, and enjoyment by numerous citizens and inhabitants of Illinois.

VI.

The defendant municipalities and political subdivisions which are situated in the State of Wisconsin at and

near the shoreline of Lake Michigan, as is demonstrated by Exhibit A, attached to this complaint and herewith made a part hereof, are now authorizing, causing, permitting or allowing, and have, for a long time heretofore, authorized, caused, permitted or allowed, the discharge of matters and effluents into Lake Michigan, consisting of untreated raw sewage or improperly or inadequately treated sewage which originates from and within the defendants' cities or sanitary sewerage systems, all controlled and operated by the defendant municipalities, their employees, servants, or agents; these matters and effluents discharged into the waters of Lake Michigan are contaminants which pollute the waters of the Lake and make them unfit for drinking, agricultural, manufacturing, and recreational purposes. They have a deleterious and injurious effect upon human beings, animals, and various forms of aquatic life, severely damaging, and ultimately leading to the destruction of, the ecology and water quality of the Lake. They affect detrimentally, especially as far as the plaintiff is concerned, those parts of the Lake which are located within the northern Lake Michigan shoreline region of the State of Illinois.

VII.

The sewage and contaminants discharged by or with the consent of the defendant municipalities into the waters of Lake Michigan are frequently carried by the flow of the waters, natural currents, and atmospheric conditions southward into the State of Illinois, below the Wisconsin-Illinois boundary, and thereby render the waters of Lake Michigan within the State of Illinois polluted, since the sewage and the contaminants so discharged

contain viruses, pathogens, and various types of bacilli which are harmful to human beings and animals, and can cause organic malfunction and disease in the human as well as the animal body; hence they constitute a severe danger to the health, safety, and welfare of the citizens and inhabitants of the State of Illinois, who make use or attempt to make use of the waters of Lake Michigan within the boundaries of Illinois.

VIII.

Since the State of Illinois and its agencies and subdivisions prohibit and prevent the discharge of raw or inadequately or improperly treated sewage into Lake Michigan, protect the quality of the Lake waters from pollution within the State's territorial boundaries, exert every effort to prevent the deterioration of water quality of the Lake and strive to steadily upgrade and improve that quality by proper legislation and administrative and court proceedings, all those efforts and endeavors are and will be set at naught and made futile, if the Lake waters flowing and finding their way into Illinois from Wisconson are polluted by defendants, thus causing grave harm and danger to the health, safety, and welfare of citizens and inhabitants of the State of Illinois.

IX.

The defendant municipalities and each of them owe a duty to riparian land owners and water users and to the People of the State of Illinois not to pollute Lake Michigan in the manner heretofore described and owe a further duty to preserve the water quality and ecology of the Lake so as not to endanger the health, safety and welfare of the citizens and inhabitants of the State of Illinois.

The defendant municipalities have failed and continue to fail to use proper recognized and approved methods and practices to adequately and properly treat and dispose of the sewage emanating from their localities or originating in the sewerage works owned or operated by them; they have thereby neglected to exercise due and proper care and diligence in conducting and carrying out their municipal responsibilities and have thus injuriously affected the rights and legal interests of the citizens and inhabitants of the State of Illinois.

X.

Notwithstanding the fact that the defendant municipalities have been repeatedly urged to improve their sewerage systems and to halt the discharge of contaminants into the waters of Lake Michigan, they have up till now failed to do so.

XI.

The discharge of the sewage and contaminants by defendants into the waters of Lake Michigan, which are carried by the natural flow and currents of the water and atmospheric conditions into Illinois, and, particularly, to the waters adjacent to the Illinois shore, causes and constitutes a public nuisance, injuriously affecting the health, safety and welfare of the citizens and inhabitants of the State of Illinois.

XII.

To the best of plaintiff's knowledge and belief, the defendant municipalities or most of them continue and will continue the wrongful act of discharging sewage and contaminants into Lake Michigan unless restrained and enjoined by this Court. Plaintiff has no adequate remedy save that afforded by a court of equity. The in-

juries to Lake Michigan and to the citizens and inhabitants of Illinois are irreparable, and only an order entered by this Court can lead to the elimination or, at least, the minimizing of the injuries to plaintiff and its citizens and inhabitants.

WHEREFORE, plaintiff prays that this Court enter a decree:

1. Perpetually enjoining the defendants and each of them from discharging raw sewage, or inadequately or improperly treated sewage into the waters of Lake Michigan;

2. Awarding the costs of the proceedings, including but not limited to expert witnesses' fees, scientific study and research costs, to plaintiff; and

3. Granting such other and further relief as the nature of the case may require and as this Court may deem proper or appropriate.

Respectfully submitted,

WILLIAM J. SCOTT,
Attorney General of the State of Illinois,
State of Illinois Building,
160 North La Salle Street,
Chicago, Illinois 60601,

Attorney for Plaintiff.

EXHIBIT A

This Map is also available with County Outlines only.

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Defendants.

STATEMENT AND BRIEF IN SUPPORT OF MOTION

JURISDICTION

The action, for which leave to file is herein sought, is to be instituted by the State of Illinois against several municipalities located in the State of Wisconsin. All these municipalities which are incorporated under the laws of the State of Wisconsin are citizens and political subdivisions of that State. Hence original jurisdiction of this Court for the action to be filed is invoked under the authority and provisions of Article III, Section 2, Clause 2 of the Constitution of the United States and Title 28, U. S. C., Section 1251.

PURPOSE OF THE PROPOSED ACTION

Investigation has revealed that the waters of Lake Michigan, flowing from Wisconsin into Illinois, have been severely polluted by raw or inadequately or improperly treated sewage discharged into the Lake by various municipalities situated in Wisconsin in areas adjacent or near to or not too far distant from the boundaries of the State of Illinois. According to the allegations of the complaint the sewage so discharged emanates from and has been originating in the cities or sewerage systems owned or operated by the municipalities named as defendants in the complaint. The waters of Lake Michigan, contaminated by those discharges, frequently flow and find their way into the State of Illinois, thereby polluting the vital water supply of many communities in Illinois and posing a grave danger to the health, safety, and welfare of numerous Illinois residents. This detrimental condition, which has persisted for many years and not been remedied by the municipalities involved, not only leads to the destruction and death of

the Lake, gravely affecting the vital interests of the citizens and inhabitants of the State of Illinois, but also thwarts and sets at naught the ceaseless efforts of the State of Illinois, acting through its governmental branches and political subdivisions, to keep the waters of Lake Michigan clean and free from pollution within the State's territorial boundaries.

The complaint, therefore, prays that the defendant municipalities be permanently enjoined from discharging raw, or inadequately or improperly treated sewage into the waters of Lake Michigan and that such other and further relief may be granted as the nature of the case may require and as this Court may deem proper or appropriate.

DIRECT PRECEDENTS INVOKING ORIGINAL JURISDICTION OF THIS COURT

This Court has always exercised original jurisdiction when citizens of one state engaged in activities which contaminated either the air or the water utilized and enjoyed by the inhabitants of another state. Thus, some sixty-odd years ago, the Attorney General of the State of Georgia successfully invoked the jurisdiction of this Court when he instituted proceedings against the Tennessee Copper Company which was located in Tennessee and was not a Georgia corporation. The copper producing plant of the defendant company had polluted the Georgia air and land through the emission of noxious fumes. This Court gave recognition to the right of the State of Georgia to protect its land from contamination and granted injunctive relief, *Georgia* v. *Tennessee Copper Company,* 206 U. S. 230, 27 S. Ct. 618, 51 L.ed. 1038 (1907).

In the early thirties the State of New Jersey sought direct relief from this Court against the continual dumping of sewage into the Atlantic Ocean by the City of New York; great amounts of that sewage were frequently carried by water currents and winds to the New Jersey coast line, polluting the State's waters and beaches. This Court authorized the granting of injunctive relief, after the matter had been assigned to a special master for hearing and recommendations. *New Jersey* v. *New York City*, 283 U. S. 473, 51 S. Ct. 519, 75 L.ed. 1176 (1931).

Exercise of original jurisdiction is particularly appropriate in this matter since this Court has shown in the past its direct and immediate concern for the protection of the rights and interests of the shore line States and their inhabitants in the preservation of the waters of Lake Michigan. That concern is effectively demonstrated by the case of *Wisconsin* v. *Illinois*, 281 U.S. 179, 50 S. Ct. 266, 74 L. ed. 799 (1930), in which this Court regulated the withdrawal of water from Lake Michigan. Although the jurisdictional authority in the latter case was based upon the provisions of the Judicial Code presently implemented and contained in Title 28, U. S. C., Section 1251 (a) (1) (all controversies between two or more states), it is respectfully submitted that the case, together with the other two cases cited, establishes a firm basis of strong and persuasive authority for the exercise of original jurisdiction by this Court in the present matter.

NEED FOR THE EXERCISE OF ORIGINAL JURISDICTION

The need for the exercise of original jurisdiction by this Court is pressing and imperative. This case involves the contamination of the water supply of many communities in a State upon which literally hundreds of thousands of persons depend. It involves the preservation of invaluable natural resources. It involves the battle against pollution.

The battle against pollution is a battle against time. If defendant municipalities are not stopped in their detrimental conduct by the decree of the highest court of the land, without the possibility of long, drawn-out contests in the lower courts, then indeed the death of Lake Michigan and the destruction of the most important water supply of the State of Illinois might become an imminent reality. The gravity and urgency of the problem brook no delay.

Coupled with the immediate and serious danger to the health and safety of numerous inhabitants of the State of Illinois is the fact that the conduct with which the defendant municipalities are charged in the complaint manifests itself in activities which are governmental in nature. The collection, treatment and disposal of sewage certainly rank among the most basic governmental functions in the field of public health. The municipalities engage in that function as political subdivisions of the state in pursuance of power delegated to them by the state. Hence, since these municipalities carry out responsibilities for, in behalf and under the authority of the state, they are an arm of the state, and the present complaint is in effect directed against the state under which these muni-

cipalities operate. Viewed in that light, the exercise of original jurisdiction in the instant case approaches a constitutional imperative.

CONCLUSION

For all the reasons stated it is respectfully asked that the motion for leave to file the bill of complaint in this Court be granted.

Respectfully submitted,

WILLIAM J. SCOTT,
Attorney General of the State of Illinois,
State of Illinois Building,
160 North La Salle Street,
Chicago, Illinois 60601,
Attorney for Plaintiff.

FRED F. HERZOG,
Of Counsel